

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

James Jerome Royster,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 11-cv-1163
	:	
Gary Mohr, et al.,	:	JUDGE PETER C. ECONOMUS
	:	Magistrate Judge Kemp
Defendants.	:	

REPORT AND RECOMMENDATION

Plaintiff, James Jerome Royster, a state prisoner confined at the Chillicothe Correctional Institution ("CCI"), filed this action against director of the Ohio Department of Rehabilitation and Correction ("ODRC") Gary Mohr, warden Norm Robinson, CCI health care administrator Alice Ault, and physician Dr. Williams. On May 31, 2013, the Court granted the motion for judgment on the pleadings filed by Defendants Mohr, Robinson, and Ault. In the May 31, 2013 Order, the Court also held that Mr. Royster had failed to serve the remaining Defendant, Dr. Williams, and granted Plaintiff a twenty-eight day extension of time to serve him.

Without proper service on Dr. Williams, this Court may not exercise personal jurisdiction over him. See Elkins v. Summit County, No. 5:06-CV-3004, 2008 WL 622038, at \*2 (N.D. Ohio Mar. 5, 2008) (citing Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999)). Fed. R. Civ. P. 4(m) provides that when service is not made within the required time, this Court is to either "dismiss the action without prejudice against that defendant" or "order that service be made within a specified time." The Court pursued the latter route, ordering that service be made within 28 days, and there is no record of Plaintiff complying with that order.

Accordingly, for the reasons set forth above, it is recommended that the action be dismissed without prejudice against Defendant Williams.

It is also recommended that Defendant's Motion to Dismiss for Lack of Prosecution (Docket No. 35) be denied as moot.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

/s/ Terence P. Kemp  
United States Magistrate Judge